U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-L-

DATE: OCT. 24, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biomedical engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition and affirmed his decision on motion. The Director found that the Petitioner had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he satisfies the national interest waiver requirements and that the Director's decision contains multiple errors of law and fact.

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Petitioner received a Ph.D. in chemical engineering from [redacted] at [redacted] in 2014. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

On appeal, the Petitoner states that he had not yet responded to the Director's request for evidence (RFE) at the time the denial decision was issued. In addition, the Petitioner indicates that both of the Director's decisions discussed evidence submitted in response to the RFE that was unrelated to his petition. Our review of the record supports the Petitioner's contention that the Director's decisions mentioned certain documentation that was not relevant to this petition. For example, both decsions incorrectly mentioned an invitation extended to the Petitioner to publish a video-article on his research methods for [redacted] This evidence relates to a RFE response from a different petition that was erroneously placed in this record.

A. Substantial Intrinsic Merit

As a scientist at [redacted] a biotechnology company, the Petitioner conducts research to help efficiently produce pharmaceuticals. We find that this research is in an area of substantial intrinsic merit because it contributes to improving U.S. healthcare resources. The record included published articles, letters of support, and online information about [redacted] product development showing the meritorious nature of the Petitioner's biotechnology research. Therefore, he meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Petitioner provided evidence indicating that the proposed benefit of his biomedical engineering research has national and international implications, as the results from his work are disseminated to others in the field through conferences and journals. Accordingly, the Petitioner meets the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner seeks to continue his research in the biomedical engineering field. He provided letters of support from experts in the field discussing his research findings and how his work has influenced the field. For example, [redacted] associate professor of [redacted] at [redacted]

explained that the Petitioner's work "has significantly advanced the field of ("test tube" blood vessels). Specifically, noted that the Petitioner developed a method for the covalent immobilization of into fibrin hydrogels and that his "process resulted in that exhibited extended pathway activation as well as a surprising degree of contraction and more resilient mechanical properties."

chair of the Department of at the indicated that the Petitioner devised "a method for uniformly immobilizing on the scaffold during the manufacturing process in order to address the problems caused by the diffusion limitation." In addition, stated that the Petitioner's technique improves "the mechanical properties and the vascular reactivity of the is useful for "in vivo implantation of and "can be applied to other SMC (smooth muscle cell)-containing tissues, with even broader implications for regenerative medicine."

a research fellow at and co-leader of the company's applied and investigative metabolomics matrix team, noted that the Petitioner has "produced seminal work that has impacted multiple disciplines" of chemical and biological engineering, including "a number of novel contributions" in the development of further explained:

> [The Petitioner] designed and built a bioreactor that delivers cyclic mechanical force to the tissue as it is forming in a way that replicates the body's behavior. By combining the growth factor immobilization technique with this pulsation bioreactor, synthetic blood vessels are created in culture with uniform distribution of cells and crucial proteins . . . .

an assistant professor in the Department of at the discussed the Petitioner's work to develop a lentiviral arrays technique for efficient monitoring of gene and pathway activation during differentiation. stated that the Petitioner's work has allowed scientists "to recognize differences in the kinetics of pathway activation between lines" and has shown that the Lentiviral Arrays technique "is a tool for boosting scientific comprehension of stem cell fate specification as well as pathway regulation and drug discovery."

associate dean of the College of Pharmacy at indicated that his research team "adopted a peptide immobilization technique implemented by [the Petitioner] . . . . Based on our analysis of this new scaffold, we were able to obtain almost a 400% increase in the efficacy of our system when compared to just a fibrin gel method."

With respect to the Petitioner's development of bioprocess engineering methods for absorbing professor of civil and environmental engineering at the stated: "[The Petitioner] developed a in which the centrifugal force of the system forces stickier absorbents to pass

through the with greater efficiency." Furthermore, noted that the Petitioner's innovation "increased the mass transfer efficiency of volatile compounds by and has been implemented by others in the field.

In addition, professor of chemical engineering at indicated that the Petitioner found that a glycerol-water solution in a "effectively captures without flooding the and "is nearly 200 more times efficient than when using a conventional packed further stated that the Petitioner's work "has significance on future research," as his findings have been frequently cited by other scientists and have "led to other studies and research."

The record included documentation of multiple research articles that the Petitioner has written or co-written, and evidence demonstrating that his published work has been frequently cited by independent researchers. A substantial number of favorable independent citations for an article is an indication that other researchers are familiar with the work and may have been influenced by it. According to citation indices provided by the Petitioner, his research articles have garnered over 50 citations by others in the field. For example, the Petitioner's article entitled in was cited to 25 times. In addition, the Petitioner's article entitled in has been cited to 16 times.

The submitted documentation, including reference letters and the frequent citation of the Petitioner's work by other researchers, is sufficient to demonstrate that his work has had a degree of influence on his field. The record establishes the significance of this Petitioner's research, as opposed to the general area of research, and identifies specific benefits attributable to his work that have influenced the field as a whole. We therefore find that the Petitioner's past record of achievement justifies a projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the record demonstrates that the benefit of retaining this petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of M-S-L-*, ID# 85892 (AAO Oct. 24, 2016)